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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 152

ROBERT WAYNE PATTERSON,
Petitioner,

versus

HUMBLE OIL AND REFINING COMPANY and
ESSO JAMESTOWN,
Respondents.

Brief of Humble Oil and Refining Company And The ESSO JAMESTOWN In Opposition To The Granting Of A Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1553

ROBERT WAYNE PATTERSON,
Petitioner,

versus

HUMBLE OIL AND REFINING COMPANY and ESSO JAMESTOWN,
Respondents.

Brief of Humble Oil and Refining Company and The ESSO JAMESTOWN In Opposition To The Granting Of A Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

MAY IT PLEASE THE COURT:

Not only is there no important or special reason for granting a writ of certiorari in this case, but there is no reason whatsoever to do so.

Respondent and its SS ESSO JAMESTOWN were sued by petitioner, a ship repairman employed by Yaun Welding and Machine Works, Inc., for injuries sustained during the course of substantial repairs being made aboard the vessel by Yaun. In the trial court, the petitioner alleged that his injuries were caus-

ed by the unseaworthiness of the vessel and by the negligence of respondent's employees. After a full trial on the merits, the trial court dismissed the petitioner's entire claim. The court of appeals, following briefs and oral argument, affirmed without dissent the decision of the district court. The petition for a writ of certiorari challenges only the disposition made of the claim based upon the alleged breach of the warranty of seaworthiness.

Prior to the time that petitioner and the other members of the Yaun work crew came aboard the vessel, one of the vessel's main shaft bearings was dismantled by the ship's crew in order to determine the cause of overheating. The vessel was totally incapacitated and unable to navigate. Inspection disclosed damage which required repair by an outside repair contractor. The ship's crew, knowing that the bearing cap would have to be removed in order for the repair work to be done, secured the bearing cap in a safe position on the shaft. Respondent engaged Yaun to perform the repairs. Yaun, in turn, sent a gang of men, including petitioner, aboard the vessel. The ship's crew did not participate in nor control the repair work in any manner.

During the course of the work, the Yaun crew moved the bearing cap from its safe position and placed it on top of the shaft. Petitioner was ordered by his foreman to attach a bridle to the bearing cap. While attempting to do so, the bearing cap fell and struck petitioner's foot.

On these facts, the trial court found that respondent was not negligent and that no warranty of seaworthiness extended to petitioner with respect to the bearing cap.

The decisions of the lower courts are correct and the application for the writ should be denied. The bearing cap was being handled solely by the repair contractor and its employees, including petitioner, which had complete and exclusive control over the repairs being carried out aboard the vessel. The bearing cap fell solely because it was improperly handled by the employees of the repair contractor. The vessel owner was in no way negligent because the cap was properly secured before the employees of the repair contractor began to work aboard the vessel and before they unsecured the cap.

Furthermore, the warranty of seaworthiness does not extend, as the court of appeals held, to outside repair workers with respect to injuries sustained due to transitory conditions created by them while carrying out repairs to a vessel.[1] In this case the petitioner and his fellow repair workers, during the course of repairs, negligently moved a 500 pound bearing cap from the position where it had been left safely secured when they took over the work and the area of the vessel involved.

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[1]The Court of Appeals emphasized that "... we are not called upon to express an opinion regarding conditions ... that are not so intimately connected with the contract. The warranty 'may exist simultaneously as to these very same shoreworkers concerning conditions over which the operating shipowner ... has a realistic physical responsibility ...'"

This is not a case dealing with a factual situation at all analogous to the decisions relied upon by petitioner, which involve longshoremen injured due to unseaworthy conditions aboard vessels, but rather this case falls within the ambit of, and is related to, the cases cited by the lower courts involving the repair of vessels and accidents that relate to the negligent carrying out of the very work the repairmen are called upon to perform. See *West v. U. S.*, 361 U.S. 118 (1959); *Moye v. Sioux City & New Orleans Barge Lines, Inc.*, 402 F. 2d 238 (5th Cir. 1968); *Pinion v. Mississippi Shipping Company*, 156 F.Supp. 652 (E.D.La. 1957); *Bruszewski v. Isthmian S. S. Co.*, 163 F.2d 720 (3 Cir. 1947).

Accordingly, just as the courts below found, this case has no relationship to the typical longshoreman-shipowner cases and the problems involved in those cases where the court must distinguish between negligence and transitory unseaworthiness. This case instead involves a clear act of negligence on the part of a repair contractor growing out of repairs being made by a contractor having absolute and complete control of the entire operation. The ship's crew was in no way involved and no equipment or conditions over which the shipowner had control caused or contributed to the accident. The shipowner was in no way negligent and no defect or unsafe condition existed when the repairmen commenced work, and the accident resulted solely from the negligence of the repairmen.

Accordingly, it is respectfully submitted that the findings and judgments of the lower courts are all fully supported by the record and by the decisions of this

court, that there exists no basis whatsoever for the granting of a writ of certiorari, and that the writ should be denied.

Respectfully submitted,

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CERTIFICATE

I, the undersigned member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of this brief in opposition to the granting of a writ of certiorari to United States Court of Appeals for the Fifth Circuit, has been served upon all other counsel by depositing the same, properly addressed, in the United States Mails, postage prepaid at New Orleans, Louisiana, this day of June, 1970.

BENJAMIN W. YANCEY